Supreme Court, U.S.
FILED

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(1)

No. _____

IN THE SUPREME COURT
OF THE UNITED STATES

Davoud Baravordeh and
D.B. Enterprises Developers, *PETITIONERS*

vs.

Bruce Arthur Schell, *RESPONDENT*

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPERIOR COURT OF PENNSYLVANIA

PETITION FOR WRIT OF CERTIORARI

Davoud Baravordeh
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21pp

QUESTIONS PRESENTED FOR REVIEW

1. When all parties are represented by counsel at a conference before trial, can the decisions of and communications from the judge act as coercion, such that the waiver of the right to have the matter heard by the Court, as part of an oral settlement agreement, is ineffective and the settlement agreement unenforceable?

2. If there is no *per se* presumption against coercion, in the situation outlined above, can the trial judge's decision to exclude critical evidence and suggest entering into a settlement agreement act as coercion, such that the subsequent settlement agreement is unenforceable?

PARTIES TO THE ACTION IN QUESTION

Bruce Arthur Schell, Plaintiff, Appellee
Davoud Baravordeh, Defendant, Appellant
DB Enterprises, Developers Builders, Inc., Defendant, Appellant

TABLE OF CONTENTS

Questions Presented 1
Parties to Action 2
Table of Contents 2
Table of Citations 2
Reports of Opinions and Orders 3
Basis for Jurisdiction 3
Relevant Constitutional and Statutory Provisions 3
Relevant Facts 4
Argument 5
  Waiver 5
  Coercion 6
  Procedural Issues 7
  Federal Laws Applicable 7
  Due Process 8
  Conclusion 8
Conclusion 9
Appendix A: Superior Court of Pa. 10
Appendix B: Court of Common Pleas Opinion 15
Appendix C: Supreme Court of Pa. 19
Appendix D: Court of Common Pleas Order 20

TABLE OF CITATIONS

U.S. Const. Amend. V 3, 5, 7
U.S. Const. Amend. XIV § 1 ..... 3, 5, 7
Pa. Const. Art. 1 § 11 ..... 3, 5, 7

Degenhardt v. Dillon Co. 6
543 Pa. 146, 669 A.2d 946 (1996)
Green v. Pennsylvania R.R. v. John H. Lewis & Co. 5
436 F.2d 389, 390 (3d Cir., 1970)
K.M.C. Co., Inc. v. Irving Trust Co. 5
757 F.2d 752, 92 A.L.R. Fed. 661 (C.A. Tenn.)
Seaboard Lumber Co. v. U.S. 5
903 F.2d 1560 (C.A. Fed.)
Yulsman v. Du Bois 6
346 Pa. 310, 30 A.2d 323 (1943)

REPORTS OF OPINIONS AND ORDERS

It is believed that none of the Opinions or Orders in this case have been reported.

BASIS FOR JURISDICTION

Statutory basis: 28 U.S.C. § 1257(a)
The Supreme Court of Pennsylvania issued its Order denying the Petition for Allowance of Appeal on March 19, 2003.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. CONST. Amend. V:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put

in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. CONST. Amend. XIV § 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

PA. CONST. Art. 1 § 11.

Courts to be open; suits against the Commonwealth.

All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay. Suits may be brought against the Commonwealth in such manner, in such courts and in such cases as the Legislature may by law direct.

RELEVANT FACTS OF THE CASE

The Defendant, Davoud Baravordeh, presented a criminal complaint against the Plaintiff for the theft of various goods. The criminal case was prosecuted by the Office of the District Attorney of Delaware County,

Pennsylvania. The Plaintiff was acquitted of the charges, and thereafter sued the Defendants for abuse of process.

The Defendants secured videotape which, if presented in Court, would contradict the disability claims of the Plaintiff, which were the basis of the Plaintiff's defense at the criminal trial. At a conference immediately before the trial, when the Defendants' counsel disclosed his intent to produce the videotapes, the Plaintiff's counsel objected. The trial judge ruled to exclude the videotapes and recommended that the parties enter into a settlement agreement to settle the case.

The parties were present at the conference, with their counsel, and the evidence excluded was crucial to the Defendants' case. Fearing that the court was biased against him, the Defendants agreed to settle the case. A record of the agreement was made and the jury was dismissed.

Thereafter, the Defendants sought to have the settlement agreement set aside, and filed a motion to do so. The trial court denied the relief requested. Without addressing the issue of coercion, the trial court listed the fact of the entry into the agreement as the basis for its decision, in the July 27, 2001 Opinion.

The Defendants timely appealed the ruling to the Superior Court of Pennsylvania. The Superior Court affirmed the trial court. The Defendants petitioned for allowance of appeal to the Supreme Court of Pennsylvania. The Supreme Court issued its *per curiam* denial of the petition for allowance of appeal on March 19, 2003.

ARGUMENT

Waiver

In Pennsylvania, there is a constitutional right to have a matter heard by the courts. PA. CONST. Art. 1 § 11. As a

matter of due process, a waiver of that right must be knowing, intelligent and voluntary. *Seaboard Lumber Co. v. U.S.*, 903 F.2d 1560 (C.A. Fed.); *K.M.C. Co., Inc. v. Irving Trust Co.*, 757 F.2d 752, 92 A.L.R. Fed. 661 (C.A. Tenn.); *Green v. Pennsylvania R.R. v. John H. Lewis & Co.*, 436 F.2d 389, 390 (3d Cir., 1970); U.S. CONST. Amends V and XIV § 1; PA. CONST. Art I § 11. An agreement entered into involuntarily is not binding on the parties, and an agreement entered into under coercion is one entered into involuntarily. *Degenhardt v. Dillon Co.*, 543 Pa. 146, 669 A.2d 946 (1996); *Yulsman v. Du Bois*, 346 Pa. 310, 30 A.2d 323 (1943).

An agreement entered into under duress is not enforceable. *Degenhardt v. Dillon Co.*, 543 Pa. 146, 669 A.2d 946 (1996); *Yulsman v. Du Bois*, 346 Pa. 310, 30 A.2d 323 (1943).

Only a voluntary waiver of a constitutional right is effective to waive that right.

Coercion

In a court case, the trial judge has a disproportionate amount of power and can has the capacity to dictate the outcome of the case. In this situation, the judge ruled to exclude critical evidence and recommended entering into a settlement agreement. Such a situation is inherently coercive.

The fundamental question in this matter is whether such coercion is actionable. The issue does not appear to have been directly addressed before.

In this situation, the issue has to be examined in two contexts: global and specific.

The global context addresses general presumptions and privileges. Is there a *per se* exclusion, a presumption that the decisions, acts and requests of the trial judge cannot be considered coercive, such that a waiver based on them is ineffective?

There are a multitude of statutes addressing civil rights and due process, including rules for the conduct of judges and judicial officers, so it would seem that there is no absolute privilege for judicial conduct with respect to coercion.

The specific context addresses the decisions and acts in this particular case. Here, there was an exclusion of essential evidence and a request that the parties enter into a settlement agreement. The communications were not in front of the jury. Both parties and their counsel were present. There is no transcript of the conference; the only transcript was of the subsequent record made of the entry into the agreement.

So, without addressing the specific language, or the tone of the communication, can the judge's decision and request act as coercion such that a waiver of a constitutional right, based on the decision and request, is ineffective?

Procedural Issues

The Supreme Court of Pennsylvania did not make any decision on the merits of the appeal sought before it. The Superior Court of Pennsylvania, in its Opinion, addresses the coercion issue by noting that there have been no cases presented on the issue and that no dispute was raised on the record at the time of the trial. Appendix A pp. 12-14, Opinion pp. 3-5. The Superior Court mistook the Defendants' actions under duress for the evidence of the duress, when the coercion was addressed in a motion to set aside the settlement agreement, not at the trial. In essence, the Superior Court decided that, since the coercion was successful, it was not a basis for overturning a decision. The merits of the claims presented in the motion to set aside the settlement agreement were not addressed.

Federal Laws Applicable

Both the federal and state constitutions require that the Trial Court act within the bounds of due process. In the Constitution of the Commonwealth of Pennsylvania, it is referred to as "due course of law", but it is essentially the same issue. U.S. CONST. Amends. V and XIV § 1; PA. CONST. Art. 1 § 11.

Due Process

The Defendants should have the ability to present his case without coercion. In this instance, allowing the matter to continue to trial would still require that the case be presented without the critical evidence, with that ruling addressed on further appeal, if necessary--and that would still occur only after a successful appeal here, and possibly a remand to the Superior Court to address the merits of the motion allegations.

For the purposes of this Petition, due process requires that this Court hear this appeal and decide whether one can be coerced in this sort of situation and whether the Defendants were, in fact, coerced, in this situation. If the appeal is not heard, then the right to have a trial on issues will be undermined, both for state and federal purposes.

Conclusion

These are all matters of Constitutional significance and directly impact the rule of law in the United States, not just the Commonwealth of Pennsylvania. If the rulings are allowed to stand, the effect of Court coercion will be incapable of being remedied, the application of the procedural rules will be denied, and due process and the right of appeal will all be denied. These are all matters of nationwide importance and are serious enough in nature to be

worthy of address by this Court.

CONCLUSION

The state courts have failed to address the issue of in-court coercion, and that failure conflicts with federal and state constitutional law. The issues have been properly preserved for review. They are material issues within this case, and they are issues of national significance. The applicability of the federal law is clear, and there are no ambiguities which would hamper this Court's addressing the issues.

This Court should grant Certiorari and allow this appeal to be heard.

Respectfully submitted,

Davoud Baravordeh

Appendix A: Superior Court of Pennsylvania Decision
Begins, P. 10
Appendix B: Court of Common Pleas of Delaware County, Pennsylvania, Opinion
Begins, P. 15
Appendix C: Supreme Court of Pennsylvania Decision, denying review
Begins, P. 19
Appendix D: Court of Common Pleas of Delaware County, Pennsylvania, Order of June 18, 2001
Begins, P. 20

BRUCE ARTHUR SCHELL	:	IN THE SUPERIOR COURT OF
Appellee	:	PENNSYLVANIA
v.	:	
DAVOUD BARAVORDEH	:	
Appellant	:	No. 1684 EDA 2001

Appeal from the ORDER entered June 19, 2001 in the Court of Common Pleas of Delaware County, Civil Division at No. 98-12956

BEFORE: ORIE MELVIN, J., COERCONE, P.J.E., and CAVANAUGH, J.

MEMORANDUM: **FILED JUNE 28, 2002**

This is an appeal from an order denying Appellant's request to set aside the parties' settlement agreement. Upon our review of the record, and the applicable law, we are compelled to affirm.

Appellee filed a praecipe for a writ of summons followed by a complaint in the Fall of 1998 alleging claims of malicious prosecution, abuse of process, slander, intentional infliction of emotional distress, negligent infliction of emotional distress, and tortious interference with prospective business relations against Appellant. Appellee's civil suit arose from action previously taken by Appellant against Appellee involving a private criminal complaint. In the private criminal complaint, Appellant had alleged that Appellee had stolen from him while in his employ. That matter went to a non-jury trial before the Honorable Joseph P. Cronin, Jr., and the relevant charges were later dismissed. [1]

Following pretrial discovery, the instant civil matter proceeded to a jury trial in February of 2001, before the Honorable George Pagano in the Court of Common Pleas of Delaware County. On February 14, 2001, the parties announced to the Trial Court that they reached a settlement in the matter before it was sent to the jury for deliberation. The terms of the settlement were that Appellee would receive $15,000.00 within forty-five (45) days, and the parties also agreed to withdraw another matter between them already on appeal. Subsequently, the jury was released from their

duties.

On April 2, 2001, Appellant filed a motion to set aside the settlement agreement. Appellant alleged that he was coerced into accepting the terms of the settlement agreement; therefore, he requested that the Trial Court set aside the agreement and order a new trial in the matter. Appellee filed an answer addressing Appellant's motion, and Appellant filed a response to that answer. On June 18, 2001, the Trial Court denied Appellant's motion to set aside the settlement and granted Appellee's petition to enforce the settlement agreement. Appellant filed his timely notice of appeal, and the Trial Court ordered that a statement of the matters complained of on appeal be filed. Appellant complied in a timely manner with that Trial Court order.

Appellant raises three (3) issues for our review:

> I. Does entry into a settlement agreement waive a subsequent contest to that agreement on the basis of coercion? [2]
>
> II. Is it an abuse of discretion for the Court to deny a motion on the assertion of an absence of evidence if that Court does not schedule a hearing in which to introduce evidence?
>
> III. Is it an abuse of discretion for the Court to award attorney fees to a party for the opposing party's request for relief, asserting a lack of evidence as a basis for a finding of vexatious conduct, when the Court did not hold a hearing to have the parties introduce testimony or physical evidence?

Appellant's Brief at 1-2.[1]

With respect to the second issue, which Appellant presents

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[1] As Appellant has failed to brief his third issue on appeal, he effectively has abandoned the argument for discussion and review before this tribunal. ***See Thomas v. Elash***, 781 A.2d 170, 177 (Pa.Super. 2001) ("Issues not addressed in the Argument section of an appellate brief are waived for purposes of appeal.").

in his brief for our review, we have scrutinized meticulously Appellant's statement of the matters complained of on appeal, filed pursuant to the Trial Court's order under Pa.R.A.P. 1925(b), and we have discerned that he did not raise this second issue in the statement which he filed with the Trial Court. Hence, Appellant has waived his second issue for review before this tribunal. ***See McKeeman v. Corestates Bank, N.A.***, 751 A.2d 655, 658 (Pa.Super 2000) ("An Appellant's failure to include an issue in his 1925(b) statement waives that issue for purposes of appellate review.")

In addressing Appellant's first issue, we recognize that he is arguing that the settlement agreement that he entered into should be set aside since his acquiescence to the agreement was not voluntary. Specifically, Appellant avers that because the Trial Court denied the introduction into evidence of [3] various videotapes proving his allegation that Appellee was a thief, he had no other choice but to enter into the settlement agreement. Hence, Appellant submits that he was coerced into entering the agreement and that he should be able to contest its validity. Appellant obviously equates an unfavorable evidentiary ruling by the Trial Court as a means of coercion. We note, however, that Appellant offers nothing in the form of precedential authority or citation to the record to support his present claim of coercion.

> We recognize as did the Trial Court that:
> [s]ettlement of matters in dispute [is] favored by the law and must, in the absence of fraud and mistake, be sustained. Otherwise any settlement agreement will serve no useful purpose.

Piluso v. Cohen, 764 A.2d 549, 551 (Pa.Super. 2000). With respect ti the favorable role that settlements play in our judicial system, we have stated that:

> [t]he primary reason is that settlement expedites transference of money into the hands of a complainant. A secondary reason is that settlement reduces the reduces the burden on and expense of maintaining the courts.

Storms Ex Rel. Storms v. O'Malley, 779 A.2d 548, 557 (Pa.Super. 2001). Further, "[c]ompromises may take the form of written

agreements or oral settlements, both of which are recognized as valid and enforceable." *Id.*, (citing 1 P.L.E. Accords and Compromise § 3 (1986)).

In light of the foregoing, we have reviewed the February 14, 2001 transcript wherein the parties were on record acknowledging that a settlement agreement has been reached. Thus, we agree with the Trial Court that:

> [a]t the time, there was no dispute as to the terms of the agreement, no dispute that the settlement was fraudulent, or that any mistakes were present.
>
> * * *
>
> [t]he record is clear that the parties agreed upon the terms of the settlement agreement. The agreement became binding at the time, and consistent with Pennsylvania law, need not be disseminated into a written document. Consequently, was entirely proper for this court, upon a motion by the [Appellee], to enter an Order enforcing the settlement.

Trial Court Opinion, 7/27/2001, at 3-4. As Appellant has offered nothing to contradict the Trial Court's findings and conclusions, we will not usurp the Trial Court's ruling in this matter. Accordingly, we affirm the Trial Court order in this instance.[2]

Order affirmed. Appellee's Motion for Taxation of Costs and Application For Further Costs and Damages is Denied.

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[2] Along with the disposition of this case, we need to address several outstanding motions. We deny Appellee's Motion for Taxation of Costs and Application for Further Costs and Damages. Further, we deny as moot Appellant's response to Appellee's Application for Taxation of Costs; Appellee's Motion to Strike Appellant's Response To Application For Taxation Of Costs And Application For Further Costs and Damages; and, Appellant's Application fro Enlargement of Time and Response to Appellee' Motion to Strike Appellant's Response.

Appellant's Response to Appellee's Application for Taxation of Costs; Appellee's Motion To Strike Appellant's Response To Application For Taxation Of Costs And Application For Further Costs And Damages; and, Appellant's Application for [5] Enlargement of Time and Response to Appellee's Motion to Strike Appellant's Response are Denied as Moot.
Judgment Entered.
/S/
Prothonotary
Date: JUNE 28, 2002 [6]

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA
CIVIL ACTION--LAW

BRUCE ARTHUR SCHELL V. DAVOUD BARAVORDEH and D.B. ENTERPRISES DEVELOPERS	NO: 98-12956

PAGANO, J. **DATE: JULY 27, 2001**

OPINION

BACKGROUND AND PROCEDURAL HISTORY

The Plaintiff, Mr. Bruce Arthur Schell, brought an action against the defendants, Davoud Baravordeh and D.B. Enterprises Developers, for malicious prosection and slander.

On July 6, 1998, after a trial in front of the Honorable Joseph P. Cronin, criminal counts against Mr. Schell were dismissed. Mr. Baravordeh had brought the charges against Mr. Schell, alleging that Mr. Schell had stolen property from the defendant and that he broke into Mr. Baravordeh's office.

As a result of the accusations and proceedings the plaintiff claimed to incur unnecessary legal expenses, extreme emotional distress, anxiety, and damage to his public reputation. On February 14, 2001, an on the record settlement negotiation occurred and a settlement was reached. The plaintiff agreed to forgo submission of the underlying case to an already [1] enpanelled jury in exchange for $15,000 to be paid within forty-five (45) days and the dismissal of all appeals generated in connection with the preexisting landlord-tenant matter between the parties[1].

On April 2, 2001, the defendants filed a Motion to Set-Aside the settlement agreement. The plaintiff responded by filing a Cross-Petition to Enforce Settlement on May 2, 2001. On June 19,

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[1] This matter was before the Superior Court, Davoud Baravordeh v. Bruce and Carol Schell, Delaware County Court Number 99-51034

2001, the Honorable George A. Pagano denied the defendant's Motion to Set-Aside, and granted the plaintiff's Motion to Enforce. In the Order, this court awarded the Plaintiff attorney's fees of $1,000.00 incurred in Answering the Motion to Set-Aside, as well as, $150.00 in interest on the principal agreement running from April 3, 2001 to June 19, 2001. Judge Pagano also stated that failure to comply with the Order within ten (10) days could result in further sanctions upon petition to the Court.

The defendant has appealed this Order, dated June 19, 2001, to the Superior Court.

STATEMENT OF MATTERS COMPLAINED OF ON APPEAL

On appeal, the defendant raises evidentiary issues concerning the exclusion of evidence by the trial court. However, the defendant has waived his right to appeal these ruling by entering into a settlement agreement. Also, the Defendant raises the issue that the Court erred in granting the Motion to Set-Aside, arguing that the defendant was coerced into accepting the settlement agreement. This Court will address these matters. [2]

I. Settlement Agreement

Generally, in the Commonwealth, settlement of matters in dispute [is] favored by the law and must, in the absence of fraud and mistake, be sustained. Piluso v. Cohen, __ Pa. Super. __, 764 A.2d 549, 551 (2000). On February 14, 2001, both parties went on the record stating that a settlement agreement had been reached. At the time, there was no dispute as to the terms of agreement, no dispute that the settlement agreement was fraudulent, or that any mistakes were present. After explaining to both parties' counsel the terms of the agreement, Judge Pagano asked, "Is that agreeable to everyone?" To which both plaintiff's counsel and defendant's counsel responded "Yes, your honor." (N.T. 5-6) Furthermore, the defendant, while claiming that he was coerced into entering the agreement, puts forth no evidence for which coercion exists.

Therefore, at that time a contract was formed. The enforceability of settlement agreements is determined according to principles of contract law. McDonnell v. Ford Motor Co., 434 Pa. Super. 439, 643 A.2d 1102, 1105 (1994). In the case of a disputed oral contract, what was said and done by the parties as well as what

was intended by what was said and done by them are questions of fact. United Coal v. Hawley Fuel Coal, Inc., 363 Pa. Super. 106, 525 A.2d 741, 742 (1987) (quoting Solomon v. Luria, 213 Pa. Super. 87, 246 A.2d 435, 438 (1968)). Here, the facts are clear:

THE COURT

> It is my understanding that the matter has been resolved...It is my understanding that this case has been settled for the sum of $15,000 and sum to be paid within 45 days from today's date. There--it's my understanding that there will be a judgment note given to that in the event that there isn't a payment, and I will--in the case that there is not made within 45 days, it will come back to me to determine if there should be post-judgment interest paid. And my understanding that everyone is agreed that that matter will be terminated as a matter that's currently, I believe, pending in the Superior Court. [N.T. 3-5]

[3]**MR. ORLOFF:** Yes, your honor. [N.T. 5]

MR. HALLIGAN: Yes, your honor. [N.T. 6]

THE COURT: Mr. Baravordeh, you are in agreement? [N.T. 8]

MR. DAVOUD BARAVORDEH: Yes, your honor. [N.T. 8]

An agreement to settle a lawsuit, voluntarily entered into, is binding upon the parties, whether or not made in the presence of the court, and even in the absence of a writing. Green v. John H. Lewis & Co., 436 F.2d 389, 390 (3d Cir. 1970); see Good v. Pennsylvania R.R. Co., 384 F.2d 989, 990 (3d Cir. 1967); Main Line Theaters, Inc. v. Paramount, 298 F.2d 801, 803 (3d Cir. 1962). Where the parties have settled upon the essential terms, the only act remaining of formalizing the agreement is not inconsistent with the existence of a present contract. See Field v. Golden triangle Broadcasting Corp., Inc., 451 Pa. 410, 418, 305 A.2 689 (1973), cert. Denied, 414 U.S. 1158, 94 S.Ct. 916, 39 L.Ed.2d 110 (1974); Hatalowich v. Redevelopment Authority of Monessen, 454 Pa. 481, 486, 312 A.2d 22 (1974); see also Restatement of Contracts § 26 (1932). Such a settlement is enforceable summarily, upon motion, by the court in a case pending before it. Golden Triangle Broadcasting Corp., at 451 Pa. 410. The record is clear that the parties agreed upon the terms of a settlement agreement.

The agreement became binding at the time, and consistent with Pennsylvania law, need not be disseminated into a written document. Consequently it was entirely proper for this court, upon a motion by the plaintiff, to enter an Order enforcing the settlement.

II. Attorney's Fees [4]

42 Pa.C.S.A. § 2503(7) provides that counsel's fees are available as a sanction for dilatory, obdurate, or vexatious conduct. An action is vexatious when filed without sufficient grounds in either law or fact if the action's sole purpose is to cause annoyance to the opposing party. Township of Lower Merion v. QED, Inc., 762 A.2d 779 (Cmwlth. 2000). If the record supports a court's finding of fact that a party's conduct was vexatious, an award will generally not be disturbed absent an abuse of discretion. Westmoreland County Industrial Development Authority v. Allegheny County Board of Property Assessment, Appeals Board, 723 A.2d 1084 (Cmwlth 1999). Here, there is absolutely no evidence put forth that the defendant was coerced into entering into a settlement agreement[2]. In the absence of any coercion, this court was entirely within its bounds to award $1,000.00 in counsel fees for the answering of the Motion to Set-Aside and the subsequent Motion to Enforce Settlement.

CONCLUSION

For the above mentioned reasoning, this court respectfully asks that the trial court's ruling be sustained.

BY THE COURT
/S/
GEORGE A. PAGANO, J.

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[2] The defendant is currently represented by Peter DiGiovanni, Esq. who did not represent the defendant at trial nor the settlement proceedings. At trial, the defendant was represented by William G. Halligan, Esq. Once a client has given express authority to his attorney to enter into a settlement agreement he/she will be bound by the actions of his attorney, absent a claim of legal malpractice. See e.g., Garnet v. D'Alonzo, 442 A.2d 1241 (Pa.Cmwlth. 1980)

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

BRUCE ARTHUR SCHELL	: No. 588 MAL 2002
Respondent	: Petition for Allowance of Appeal
v.	: from Order of the Superior Court
DAVOUD BARAVORDEH &	:
D.B. ENTERPRISES	:
DEVELOPERS	:
Petitioners	:

ORDER

PER CURIAM

AND NOW, this 19th day of March, 2003, the Petition for Allowance of Appeal is DENIED.

TRUE & CORRECT COPY
ATTEST MAR 19 2003
/S/
SHIRLEY J. PHIPPS
APPELLATE CLERK

IN THE COURT OF COMMON PLEAS DELAWARE COUNTY, PENNSYLVANIA
CIVIL ACTION -- LAW

BRUCE ARTHUR SCHELL : NO: 98-12956
v. :
DAVOUD BARAVORDEH, et al. :

ORDER

AND NOW, this 18th day of June, 2001, upon consideration of the defendant's Motion to Set Aside Settlement, plaintiff's Answer in Opposition thereto, and plaintiff's Petition to Enforce Settlement Agreement and any response thereto, as well as facts elicited at a hearing which took placer on February 14th, 2001, it is hereby **ORDERED** and **DECREED** that the defendant's Motion is **DENIED**. [1]

IT IS FURTHER ORDERED that plaintiff's Petition to Enforce Settlement is **GRANTED**.

IT IS FURTHER ORDERED that defendants shall **IMMEDIATELY** and **FORTHWITH** dismiss any and all appeals filed in connection with a preexisting landlord-tenant action currently pending in Pennsylvania Superior Court and take whatever action necessary to dispose of the underlying matter.

IT IS FURTHER ORDERED that defendants shall **IMMEDIATELY** and **FORTHWITH** pay plaintiff $16,150.00 representing payment of the principal settlement amount of $15,000.00 plus interest in the amount of $150.00 running from April 3, 2001, to present as well as $1,000.00 representing attorney's fees and costs incurred in the instant Answer in Opposition to Motion to Set Aside Settlement Agreement and Petition to Enforce Settlement Agreement.

IT IS FURTHER ORDERED that defendant's failure to comply with the terms of the Order within ten (10) days may result in the imposition of further sanctions upon application to this Court.

/S/
GEORGE A. PAGANO

[2]